



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2011

Mr. Samuel B. Katz
Chief Appellate Prosecutor
Comal County
150 North Seguin Avenue, Suite 314
New Braunfels, Texas 78130

OR2011-01228

Dear Mr. Katz:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 406880 (Comal File No. 10OR074).

The Comal County Criminal District Attorney's Office (the "district attorney") received a request for all records pertaining to a specified complaint and investigation involving the requestor's client. You claim the requested investigation records are excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information is subject to section 552.022 of the Government Code, which states, in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). You state the requested information consists of a completed investigation. Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. You claim the requested information is excepted under section 552.103 of the Government Code. This section, however, is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). As such, it is not other law that makes information confidential for the purposes of section 552.022. Consequently, the requested information may not be withheld under section 552.103 of the Government Code. We note, however, some of the information may be subject to section 552.1175 of the Government Code.² Furthermore, you claim the information is excepted under sections 552.108 and 552.130 of the Government Code. Because information subject to section 552.022(a)(1) may be withheld under sections 552.108, 552.1175, and 552.130, we will consider the applicability of these exceptions to the information at issue.

Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Generally, section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information, the release of which

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

would interfere with a particular pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In your comments to this office, you assert the requested information is excepted under sections 552.108(a)(1) and 552.108(a)(2). You state the requested information pertains to a closed criminal investigation conducted by the New Braunfels Police Department that was rejected for prosecution by the district attorney and, thus, did not result in a conviction or deferred adjudication. You also argue, however, the statute of limitations has not run on the alleged crime at issue in the requested information and the case could be re-submitted to the district attorney for further review and possible prosecution. Because you have provided this office with contradictory information regarding the current status of the case, we find you have failed to sufficiently demonstrate the applicability of section 552.108. Therefore, we conclude the district attorney may not withhold the requested information under either section 552.108(a)(1) or section 552.108(a)(2) of the Government Code.

Section 552.1175 of the Government Code applies to commissioned security officers as defined by section 1702.002 of the Occupations Code, and provides in pertinent part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). The submitted information contains the home address, social security number, and family member information of a security guard who, the submitted information reflects, is a commissioned security officer for purposes of section 1702.002. *See Occ. Code* § 1701.002(5) (defining "commissioned security officer" as a security officer to whom a security officer commission has been issued by the Texas Private Security Board). Thus, if this security officer elects to restrict access to the personal information we have marked in the submitted records, the district attorney must withhold this information under

section 552.1175 of the Government Code. If this individual does not elect to restrict access to his information, the marked information may not be withheld on that basis.³

The remaining information contains a Texas driver's license number. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Thus, the district attorney must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.⁴

The remaining information contains the requestor's client's social security number. You state the district attorney will withhold social security numbers pursuant to section 552.147 of the Government Code. *See id.* § 552.147(b) (authorizing a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act). The requestor, however, as his client's authorized representative, has a right to his client's social security number pursuant to section 552.023 of the Government Code. *Id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Therefore, the district attorney may not withhold the requestor's client's social security number under section 552.147 of the Government Code.

In summary, if the security officer whose personal information is at issue elects to keep his information confidential, the district attorney must withhold the information we marked under section 552.1175 of the Government Code. The district attorney must withhold the marked Texas driver's license number under section 552.130 of the Government Code. The remaining information must be released.⁵

³To the extent the security guard's social security number may not be withheld under section 552.1175, we note, and you acknowledge, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

⁴Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁵We note the information being released includes the requestor's client's Texas driver's license number, which is generally confidential under section 552.130 of the Government Code. Because this exception was enacted to protect a person's privacy, as his client's authorized representative, the requestor has a right of access to his client's private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a). Furthermore, the information being released includes the requestor's client's e-mail address that is generally confidential under section 552.137(a) of the Government Code, to which the requestor has a right of access under section 552.137(b) of the Government Code. *See id.* § 552.137(a), (b).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 406880

Enc. Submitted documents

c: Requestor
(w/o enclosures)